

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Annual Assessment of the Status of

Competition in the Market for the

Delivery of Video Programming

MB Docket No. 06-189

**REPLY COMMENTS OF THE PEOPLE OF THE STATE OF CALIFORNIA
AND THE PUBLIC UTILITIES COMMISSION OF THE STATE OF
CALIFORNIA ON THE NOTICE OF INQUIRY**

I. INTRODUCTION AND SUMMARY

The People of the State of California and the Public Utilities Commission of the State of California (California or CPUC) respectfully submit these comments in response to the Notice of Inquiry (NOI) issued by the Federal Communications Commission (Commission) on October 20, 2006.¹ In the NOI, the Commission solicits information for its annual report to Congress on the state of competition in the video marketplace; specifically, the Commission seeks “information, comments, and analyses that will allow [the Commission] to evaluate the status of competition in the video

¹ In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, MB Docket no. 06-189, FCC 06-154 (rel. October 20, 2006) (NOI).

marketplace, changes in the marketplace since the *2005 Report* [footnote omitted], prospects for new entrants, factors that have facilitated or impeded competition, and the effect these factors are having on consumers' access to video programming.”² In these comments, the CPUC addresses limited issues raised in the NOI.

II. CALIFORNIA STATEWIDE VIDEO FRANCHISING PROCESS

As the Commission observed in the NOI, numerous states, including California, have adopted statewide video franchising procedures.³ The Commission noted that Congress is considering legislation that would establish a national video franchise, and the Commission seeks comment on, *inter alia*, the impact of state and local regulations on the video franchise process.⁴ The CPUC offers these comments in order that federal video franchising policy may be informed by activities already underway at the state level.

California's *Digital Infrastructure and Video Competition Act* (DIVCA), which takes effect on January 1, 2007,⁵ makes the PUC the sole state franchising authority. Although local entities may renew or extend

² NOI, at ¶ 1.

³ The NOI notes the existence of statewide video franchising procedures in Texas, California, Indiana, Kansas, New Jersey, North Carolina, and South Carolina, in addition to a streamlined franchising process in Virginia and legislation under consideration in Iowa. NOI at n.13.

⁴ NOI at ¶ 12.

⁵ Digital Infrastructure and Video Competition Act of 2006 (DIVCA), Assembly Bill 2987, CHAPTER 700, STATS. 2006 (attached).

existing franchises in calendar year 2007, the Commission will be responsible for issuing and renewing all California video franchises after January 2, 2008.

In promulgating DIVCA, the legislature intended that a statewide video franchising process should achieve the following objectives:

- (a) Create a fair and level playing field for all market participants that does not disadvantage or advantage one service provider or technology over another;
- (b) Promote the widespread access to the most technologically advanced cable and video services to all California communities in a nondiscriminatory manner, regardless of their socioeconomic status;
- (c) Protect local government revenues and control of public rights-of-way;
- (d) Require video service providers to comply with all applicable consumer protection laws;
- (e) Complement efforts to increase investment in broadband infrastructure and close the digital divide;
- (f) Continue access to and maintenance of public, education, and government (PEG) channels; and
- (g) Maintain all existing authority of the California Public Utilities

Commission as established by state and federal statutes.⁶

Consistent with these objectives, DIVCA lowers entry barriers by permitting video service providers (VSPs) to seek statewide franchises in new service territories immediately. DIVCA also levels the playing field by allowing incumbent VSPs to seek state franchises in their current service territories when one of three conditions applies: (i) when their local franchises expire; (ii) when a new VSP provides notice of its intent to provide

⁶ CAL. PUB. UTIL. CODE §§ 5810(a)(2)(A)-(G).

service in the incumbent VSP's service territory; or (iii) when the incumbent VSP and the local franchising authority agree to terminate the incumbent VSP's local franchise.⁷

DIVCA sets forth the statewide franchise application process in great detail. The Act establishes the information which must be provided in the application and the timeline the CPUC must follow when reviewing an application:⁸ The CPUC has 30 days from receipt to review an application for completeness or incompleteness, and 14 days to issue the statewide franchise after an application is determined to be complete.⁹ By outlining the information that must be provided in the application, establishing a 44-day window for the grant of a state franchise after receipt of a complete application, and defining the respective roles of VSPs and state and local governments, DIVCA has produced a process that is swift, transparent, and predictable.

Although the CPUC replaces localities as the state franchising authority, the localities continue to receive the franchise fee from VSPs, and retain control over areas uniquely within their expertise.¹⁰ Local entities retain primary control over environmental protection, use of their rights-of-way, and customer protection. First, localities are the lead agencies for

⁷ CAL. PUB. UTIL. CODE §§ 5840(g), (o).

⁸ CAL. PUB. UTIL. CODE §§ 5840, 5890, 5930, *passim*.

⁹ CAL. PUB. UTIL. CODE §§ 5840(h)(1)-(2).

¹⁰ CAL. PUB. UTIL. CODE §§ 5840(a), 5860(a), 5885, 5900(c).

determining whether a project is likely to have significant environmental effects, and determining ways in which the environmental effects might be mitigated.¹¹ Second, local authorities maintain control over rights-of-way within their respective jurisdictions. Localities may deny a VSP's application for permission to use the rights-of-way if the VSP has not complied with state environmental protection standards.¹² Third, although customer service and consumer protection standards for VSPs are prescribed by state statute, local authorities enforce the standards within their jurisdictions and respond to complaints on behalf of their residents.¹³

The CPUC has opened an Order Instituting Rulemaking and issued a draft General Order implementing DIVCA. The CPUC has received comment on our interpretation of DIVCA, and on the extent to which the process in our draft General Order comprehensively and faithfully reflects DIVCA's intent.¹⁴ A decision is expected in January 2007.

III. STATE DATA COLLECTION ACTIVITIES

In the NOI, the FCC also seeks comment on, *inter alia*, the number of households that can receive video service from more than one provider;¹⁵

¹¹ This review is conducted pursuant to the *California Environmental Quality Act*, CAL. PUB. RES. CODE § 2100 *et seq.*

¹² DIVCA § 5885(c)(2).

¹³ DIVCA § 5900(c); see also Cable Television and Video Provider Customer Service and Information Act, CAL. GOVT. CODE §§ 53054-53056; Video Customer Service Act, CAL. GOVT. CODE §§ 53088-53088.2.

¹⁴ Docket No. R.06-10-005; both the Order Instituting Rulemaking and the General Order are attached.

¹⁵ NOI at ¶ 5.

differences in video competition between rural and smaller markets and larger urban areas;¹⁶ advanced services offered by VSPs;¹⁷ and information on ownership transactions, including whether or not ownership transactions are more likely to occur in certain types of markets, or between systems of a certain size.¹⁸ Although these comments precede the launch of California's statewide video franchise process, and the CPUC is therefore unable to provide detailed information on the current state of the video or broadband marketplace in California, the CPUC notes that much of the information sought by the FCC in the instant NOI is precisely the type of information that will be collected regularly by the CPUC pursuant to DIVCA's reporting requirements.

DIVCA requires all VSPs with statewide franchises to file annual reports to the CPUC on the extent to which the VSP furnishes video and broadband service in California.¹⁹ Specifically, VSPs are required to report the following broadband-related information on a census tract basis:

- (a) The number of California households passed by the VSP's broadband service, and the number of households that subscribe to the VSP's broadband service; and
- (b) The technology or technologies the VSP uses to provide broadband.²⁰

¹⁶ NOI at ¶ 21.

¹⁷ NOI at ¶ 78.

¹⁸ NOI at ¶ 34.

¹⁹ CAL. PUB. UTIL. CODE § 5960(a).

²⁰ CAL. PUB. UTIL. CODE § 5960(b)(1).

VSPs also must report the following video-related information on a census tract basis:

- (a) If the VSP is a telephone corporation, the VSP must report the number of households in its telephone service area, and the number of households passed by the VSP's video service.
- (b) If the VSP is not a telephone corporation, the VSP must report the number of households in its video service area; and the number of households passed by the VSP's video service.²¹

Finally, the following information is required on low-income households, also on a census tract basis: The number of low-income households in the VSP's video service area; and the number of low-income households passed by the VSP's video service.²²

DIVCA's reporting requirements are part of California's coordinated effort to support the deployment of advanced communications technologies throughout the state by encouraging continued investment in broadband and video networks, fostering the adoption of advanced technologies, and removing barriers to deployment.²³ The CPUC's 2005 Broadband Deployment Report emphasizes the importance of this effort:

The most significant economic benefits do not come from the deployment of broadband technology, but in its use. As broadband penetration increases, there will be resulting demand for computer and home network equipment, software applications, wireless devices and

²¹ CAL. PUB. UTIL. CODE § 5960(b)(2).

²² CAL. PUB. UTIL. CODE § 5960(b)(3).

²³ See CAL. PUB. UTIL. CODE § 709; "Twenty-First Century Government: Expanding Broadband Access and Usage in California," California Executive Order S-21-06, signed October 27, 2006.

other equipment that utilize broadband. Like all infrastructure investment, the economic impacts of broadband will also include the increased productivity and innovation that it fosters. The full economic impact of widespread broadband deployment and adoption cannot be captured in even the most sophisticated econometric modeling.²⁴

In reaching this conclusion, the PUC cited several studies that quantified the direct economic impact of broadband deployment in terms of jobs created to deploy, maintain, and provide services over the deployed networks, as well as the indirect economic effect of jobs created through the increased use of broadband networks, including jobs related to the development of new products and services as well as jobs created by the increased spending of employees involved in broadband deployment.²⁵ The 2005 Report also detailed several social impacts of increased broadband deployment and adoption, including the following: rural access to improved healthcare through Telemedicine; business efficiencies and environmental gains from telecommuting; enhanced delivery of services to residents through e-Government; and enhanced connections and communications for the disabled.²⁶

California's use of the data received pursuant to DIVCA will be informed by the success other states have had in driving advanced

²⁴ 2005 Report at 33.

²⁵ "Broadband Deployment Report," CPUC Staff Report, available at <http://www.cpuc.ca.gov/static/telco/reports/broadbandreports.htm>, May 5, 2005, at 33-39 ("2005 Report").

²⁶ 2005 Report at 40-43.

communications infrastructure development and adoption through data collection and mapping activities. One example among many is Kentucky's ConnectKentucky initiative, "an alliance of technology-minded businesses, government entities, and universities working together to accelerate technology in the Commonwealth. ConnectKentucky supports statewide broadband infrastructure expansion, technology planning, and public policy."²⁷

As a first step in facilitating the availability of broadband for every Kentuckian, ConnectKentucky is collaborating with the Kentucky Infrastructure Authority and with the Mid-America Remote Sensing Center to produce Geographic Information System (GIS) maps showing the availability (and unavailability) of broadband across the Commonwealth, with additional data such as population density, highways, proposed water and sewer lines, proposed transportation projects, water tanks, and cell towers.²⁸ The location of water tanks and cell towers is useful to providers contemplating wireless infrastructure deployment, and proposed water, sewer, and transportation projects show the vector of development within the Commonwealth, which may serve as an incentive to providers contemplating infrastructure deployment in un- or under-served areas.²⁹

²⁷ <http://www.connectkentucky.org/about/structure.htm>

²⁸ ConnectKentucky Report 2006, at 17-18.

²⁹ ConnectKentucky Report 2006, at 19-20.

Kentucky has demonstrated how prudent, targeted data collection and coordination between public and private entities can be part of a larger effort to drive advanced communications deployment and adoption within a state. ConnectKentucky has been recognized by the United States Economic Development Administration, which in 2006 awarded ConnectKentucky its Excellence in Innovation Award.³⁰ Other states with proactive broadband strategies include Wyoming, whose Wyoming Telecommunications Council combines data collection and mapping with supply-side analysis to “fill in the gaps” in unserved areas; and North Carolina, whose e-NC initiative works to expand broadband access to all North Carolinians through grant-making, advocacy, and coordinated supply-side and demand-side efforts.³¹

These state efforts, in addition to providing a knowledge base within their own states, could also serve as a valuable resource to the Commission in the Commission’s efforts to understand the forces that drive the deployment and adoption of technology. Therefore, California encourages the Commission to reach out to the states that have experience in data collection so that the Commission may have the benefit of their experience and, perhaps, foster greater cooperation and exchange between the states. Similarly, California believes that the states could benefit from access to the data collected by the Commission for these Reports to Congress, and California encourages the

³⁰ Economic Development America, Summer 2006, at 20-22.

³¹ “Connecting California: Broadband Report Update,” CPUC Staff Report, September 20, 2006, at 18-23 (“2006 report”).

Commission to consider sharing this data with states in support of the states' efforts to drive the deployment of advanced communications technologies.

IV. CONCLUSION

The CPUC respectfully submits California's statewide video franchise statute as an example of a successful balancing of the interests of industry, consumers, and state and local governments in the hopes that it will inform video-related policy-making at the federal level. In addition, the CPUC draws the Commission's attention to state-level data collection activities in various states as examples of the ways that states are using data to identify gaps in video and broadband infrastructure and subscribership, and building on this data through public-private partnerships to bring the economic and social benefits of technology and advanced services to their residents. The CPUC believes that the universal goal of advanced technological deployment can be enhanced by greater cooperation and data sharing between the Commission and the states, as well as between the states themselves.

Respectfully submitted,

RANDOLPH WU
HELEN M. MICKIEWICZ
GRETCHEN T. DUMAS

By: /s/ GRETCHEN T. DUMAS

Gretchen T. Dumas

505 Van Ness Avenue
San Francisco, CA 94102
Phone: (415) 703-2169
Fax: (415) 703-4592

December 27, 2006

Attorneys for the California
Public Utilities Commission and
the People of the State of
California